

Message Text

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ACTION EB-08

INFO OCT-01 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01 CIAE-00
COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05 L-03 LAB-04
NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15 STR-04
ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 FEAE-00 OMB-01
AF-08 ARA-06 EA-07 EUR-12 NEA-10 OIC-02 /133 W
-----221348 129255 /50

R 221122Z FEB 77

FM USMISSION GENEVA

TO SECSTATE WASHDC 5356

INFO ALL EC CAPITALS 169

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PASS STR AND AGRICULTURE ELECTRONICALLY

E.O. 11652: NA

TAGS: ETRD, EAGR, GATT, EEC

SUBJ: GATT XXIII:2 PANEL ON EC'S COMPULSORY PURCHASE SCHEME
FOR NFDM

REF: STATE 31278

1. SUMMARY. THE GATT XXIII:2 PANEL ON NFDM MET ON
FEBRUARY 17-18. U.S. CHARGES THAT THE COMPULSORY PURCHASE
SCHEME WAS INCONSISTENT WITH GATT ARTICLES I, II AND III
WERE DENIED BY THE EC DELEGATION. THE EC ASSERTED THAT
THE SCHEME COULD BE JUSTIFIED UNDER ARTICLE II(2)(A)
AND III(1) WHICH PERMITS THE APPLICATION OF TAXES APPLIED
EQUALLY TO DOMESTIC AND IMPORTED PRODUCTS. THE EC ALSO
ASSERTED THAT THE MEASURES HAVE CAUSED NO TRADE DAMAGE.
WE COUNTERED THAT THE TASK OF THE PANEL WAS TO MAKE A
DETERMINATION OF GATT LEGALITY AND NOT TRADE DAMAGE,
BUT NOTED THAT THE SCHEME HAD OBVIOUSLY CAUSED A
SIGNIFICANT DISPLACEMENT OF TRADE. THE PANEL PLANS TO
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MEET ON MARCH 8 TO DISCUSS THE CASE AMONG THEMSELVES.
THE NEXT FULL MEETING OF THE PANEL (INCLUDING THE
DELEGATIONS) IS SCHEDULED FOR MARCH 21-22. END SUMMARY.

2. THE EXAMINATION BY THE GATT ARTICLE XXIII:2 PANEL OF
THE U.S. COMPLAINT THAT THE EC'S COMPULSORY SCHEME FOR
NFDM WAS NOT CONSISTENT WITH THE GATT BEGAN ON

FEBRUARY 17 AT 3:00 PM AND RAN THROUGH THE NEXT DAY. THE PROCEEDINGS OPENED WITH STATEMENTS BY U.S. AND EC DELEGATIONS AND THEN MOVED TO A POINT-BY-POINT DISCUSSION. THE U.S. DEL WAS HEADED BY J. STARKEY, STR, AND G. FRASER, FAS. THE EC DEL WAS HEADED BY MARINUCCI.

3. WE EXPLAINED THE OPERATION OF THE EC NFDM PROGRAM AND ASSERTED THAT IT WAS INCONSISTENT WITH ARTICLES I, II AND II OF THE GATT. WE STATED OUR CASE THAT THE EC SCHEME VIOLATED ARTICLE III(5) OF THE GATT IN THAT IT WAS AN ILLEGAL MIXING REGULATION, ARTICLE III(4) IN THAT IT DISCRIMINATED AGAINST IMPORTED PRODUCTS, ARTICLE II(1)(B) IN THAT IT VIOLATED GATT BINDINGS ON VEGETABLE PROTEIN PRODUCTS AND ARTICLE I IN THAT IT ACCORDED MORE FAVORABLE TREATMENT TO IMPORTS FROM SOME COUNTRIES THAN OTHERS. WE SAID THAT WHILE THE IMPORT DEPOSIT REQUIREMENT OF THE SCHEME HAD BEEN TERMINATED ON OCTOBER 31, 1976, THE SUBSIDY ELEMENTS AND THUS DISPLACEMENT EFFECT ON VEGETABLE PROTEINS CONTINUES. MOREOVER, A FINDING REGARDING GATT CONSISTENCY WAS STILL NECESSARY.

4. THE EC MAINTAINED THAT THE COMPULSORY PURCHASE SCHEME DID NOT VIOLATE ANY OF THE AFOREMENTIONED GATT ARTICLES. THEY SAID THAT IT DID NOT VIOLATE ARTICLE I OF THE GATT BECAUSE IT WAS NOT THE INTENT OF THE SCHEME TO GIVE ANY ADVANTAGE WHATSOEVER TO PARTICULAR PRODUCTS. THEY SAID THAT TRADE IN THE PRODUCTS NOT LIMITED OFFICIAL USE

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COVERED BY THE SCHEME (FISH AND MEAT MEAL) WAS RELATIVELY SMALL AND IN ANY CASE HAD DECLINED DURING THE PERIOD OF APPLICATION OF THE SCHEME. ALSO, PRICES FOR THESE PRODUCTS WERE NOT COMPETITIVE DURING THE OPERATION OF THE SCHEME. THE EC CLAIMED THAT THE SYSTEM COULD BE JUSTIFIED UNDER ARTICLE II(2)(A) AND III(1), WHICH PERMITS THE APPLICATION OF INTERNAL TAXES AND CHARGES APPLIED EQUALLY TO DOMESTIC AND IMPORTED PRODUCTS. THEREFORE, THEY ASSERTED, THE GATT DUTY BINDING ON VEGETABLE PROTEIN PRODUCTS HAD NOT BEEN IMPAIRED. THEY ASSERTED THAT THE SCHEME DID NOT VIOLATE GATT ARTICLE III(4) WHICH REQUIRES EQUAL TREATMENT FOR IMPORTED AND DOMESTIC PRODUCTS. FINALLY, THEY DENIED THAT THE SCHEME CONSTITUTES A MIXING REGULATION UNDER ARTICLE III(5) OF THE GATT. THEY SAID THAT IT DID NOT REQUIRE MIXTURE AND THAT IT DID NOT FORCE THE EC FEED MANUFACTURERS TO MIX THE PRODUCT IN A SPECIFIC AMOUNT OR PROPORTIONS.

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5. THE EC ALSO ASSERTED THAT THERE HAD BEEN NO DAMAGE TO U.S. TRADE AND PRODUCED FIGURES SHOWING THAT IN FACT U.S. EXPORTS OF OILSEEDS AND OILSEED CAKES AND MEALS IN APRIL-OCTOBER 1976 WERE ABOVE YEAR EARLIER LEVELS. WE REMINDED THE PANEL THAT AT THIS TIME THEY WERE BEING ASKED ONLY TO DETERMINE WHETHER OR NOT THE SCHEME WAS CONSISTENT WITH THE GATT AND THAT THEY WERE NOT BEING ASKED TO DETERMINE TRADE DAMAGE. HOWEVER, WE FURTHER NOTED THAT THE SCHEME HAD OBVIOUSLY CAUSED SIGNIFICANT DISPLACEMENT OF TRADE SINCE IT HAD RESULTED IN THE USE OF SOME 365,000 TONS OF NFDN IN ANIMAL FEED IN PLACE OF VEGETABLE PROTEIN PRODUCTS.

6. THE POINT-BY-POINT DISCUSSION WAS ESSENTIALLY AN ELABORATION OF THE POINTS MADE IN THE OPENING STATEMENTS OF U.S. AND EC DELEGATIONS AND PRESENTED IN DETAIL IN THE LEGAL BRIEFS SUBMITTED BY BOTH DELEGATIONS. THE EC REPEATEDLY ASSERTED THAT IT WAS NOT CLEAR UNDER WHICH GATT ARTICLE THE U.S. WISHED TO CONDEMN THE SCHEME. WE POINTED OUT THAT THE SCHEME LOGICALLY COULD BE, AND IN FACT WAS, IN VIOLATION OF MORE THAN

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ONE ARTICLE SIMULTANEOUSLY. IN DISCUSSING GATT RULES
DEFINING MIXING REGULATIONS WE POINTED OUT THAT
ARTICLE III REFERRED SPECIFICALLY TO THE USE OR
PROCESSING OF PRODUCTS, NOT JUST TO THEIR MIXTURE. WE
ALSO POINTED OUT THAT THE SCHEME COULD NOT QUALIFY FOR
AN ARTICLE II(A) EXEMPTION BECAUSE IMPORTED AND DOMESTIC
PRODUCTS WERE NOT IN FACT TREATED THE SAME UNDER THE
SCHEME.

7. THERE WAS CONSIDERABLE DISCUSSION OF THE CONCEPT
OF "LIKE PRODUCTS", WHICH APPEARS IN SEVERAL OF
THE GATT ARTICLES IN QUESTION. SINCE THE EC SEVERAL
TIMES POINTED OUT THAT THIS CONCEPT WAS NOT AT ALL
CLEAR, THE PANEL CHAIRMAN ASKED THAT BOTH DELEGATIONS
SUBMIT A LIST OF "LIKE PRODUCTS" IN LIGHT OF THIS
SPECIFIC COMPLAINT TO THE PANEL.

8. THE CHAIRMAN ANNOUNCED THAT THE PANEL HAD DECIDED
TO MEET ON MARCH 8 TO DISCUSS THE CASE PRIVATELY AND
FORMULATE BASIC QUESTIONS. HE SUGGESTED THE NEXT
MEETING BE HELD MARCH 21-22 AND THIS WAS ACCEPTED BY
BOTH DELEGATIONS. WE PROMISED TO TRY TO GIVE
THE PANEL ADDITIONAL WRITTEN COMMENTS ON THE EC'S
LEGAL ARGUMENTS BEFORE THE MARCH 8 MEETING.

9. RE FREEDOM OF INFORMATION ISSUE, THE CHAIRMAN OF
THE PANEL STATED AT THE BEGINNING OF THE SESSION
THAT FOR THE DURATION OF PANEL DELIBERATIONS ALL
COUNTRY SUBMISSIONS AND DOCUMENTS SHOULD BE CONSIDERED
AS CONFIDENTIAL. HE ADDED THAT QUESTION OF WHAT
SHOULD BE DONE WITH THIS MATERIAL AFTER PANEL HAD
CONCLUDED ITS WORK NEED NOT BE ADDRESSED AT THIS
TIME AND WOULD BE UP TO THE GATT COUNCIL. AS THIS
WAS ACCEPTABLE TO U.S. ON BASIS OF INSTRUCTIONS
(REFTEL) AND EC DID NOT OBJECT, THERE WAS NO FURTHER
DISCUSSION OF THIS QUESTION. CATTO
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Message Attributes

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